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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,332	10/23/2003	Jianying Shi	GP303660	9109

7590 03/02/2005

## GENERAL MOTORS CORPORATION

Legal Staff - Intellectual Property

Mail Code 482-C23-B21

P.O. Box 300

Detroit, MI 48265-3000

EXAMINER
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ZANELLI, MICHAEL J

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/692,332

Applicant(s)

SHI, JIANYING

Examiner

Michael J. Zanelli

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 20 is/are rejected.
- 7) ☒ Claim(s) 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The application filed 10/23/03 has been examined. Claims 1-20 are pending.
2. Claims 16-20 are objected to because of the following informalities:
  - A. As per claim 16, at line 1 change “;” to --, comprising:--.
  - B. All claims depending from an objected base claim are also objected to as containing the same deficiencies.
3. Claims 7-9 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - A. As per claim 7, “said wireless communication mechanism” lacks antecedence. Note claim 6 recites “a wireless data exchange mechanism”.
  - B. As per claim 9, “said external server” lacks antecedence.
  - C. As per claim 20, “the wireless data exchange mechanism” lacks antecedence. Note claim 16 recites “a wireless communication mechanism”.
  - D. All claims depending from a rejected base claim are also rejected as containing the same deficiencies.
4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 6, 7, 16 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over at least claims 1 and 7 of U.S. Patent No. 6,687,587. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the patent claims and the application claims are directed to upgrading software of a vehicle using wireless communication (See Fig. 1 of the patent and Fig. 2 of the application).

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 6, 7, 10, 16, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Razavi et al. (6,370,449).

A. As per claims 6 and 16, Razavi discloses a data exchange system (Fig. 1) for a vehicle which includes a wireless data exchange mechanism (15), an external processor (17) having a datastore of vehicle software (col. 5, lines 29-36) and a vehicle (18) including a system bus (12) having a plurality of processors (14) whereby software

upgrades for the processors may be made via the wireless link to the external processor (col. 2, lines 37-45).

B. As per claims 7 and 17, as above whereby the vehicle may include an area network for enabling communication between the processors and the wireless communication mechanism (Figs. 1,2; cols. 3-5).

C. As per claims 10 and 20, as above whereby the wireless data exchange mechanism allows for connection to an Internet server (Fig. 1; cols. 4-5).

8. Claims 6, 7, 10, 16, 17 and 20 are further rejected under 35 U.S.C. 102(e) as being anticipated by Kacel (6,687,587).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

A. As per claims 6 and 16, Kacel discloses a data exchange system (Fig. 1) for a vehicle which includes a wireless data exchange mechanism (125), an external processor (140) having a datastore of vehicle software (col. 2, lines 37-47) and a vehicle including a system bus (115) having a plurality of processors (130-134) whereby software upgrades for the processors may be made via the wireless link to the external processor (col. 11, lines 8-22).

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B. As per claims 7 and 17, as above whereby the vehicle may include an area network for enabling communication between the processors and the wireless communication mechanism (Fig. 1:115,120).

C. As per claims 10 and 20, as above whereby the wireless data exchange mechanism allows for connection to external communication networks (col. 5, lines 19-28).

9. Claims 1-5 and 11-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Knight et al. (2003/0163587).

A. As per claims 1 and 11, Knight discloses a data exchange system (Figs. 1A,B) which includes a portable memory device (112) [0118]; an external processor having vehicle software [0118] and a vehicle (100) having either internal or external communication port (200) which enables one to transfer the information stored in the portable memory device to various vehicle control processors (102-106). See also [0013] and [0154].

B. As per claims 2-5 and 12-15, as above wherein a USB port is internally connected to the vehicle's onboard network, or externally connected using an adapter, such that data can be transferred from an external computer to various vehicle processors via a portable USB device. The USB device also allows one to transfer data from the vehicle to the external computer for further analysis (Figs. 1A,B; [0015]; [0018]; [0158]). Knight further discloses providing a plurality of different types of communication interfaces (Fig. 2).

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10. Claims 1, 6 and 11 are further rejected under 35 U.S.C. 102(e) as being anticipated by Skeen et al. (6,832,141).

A. As per claims 1, 6 and 11, Skeen discloses a data exchange system (Figs. 2,4,7) which allows one to transfer data from an external computer to a vehicle network using a portable memory device connected to a communication port of the vehicle (Abs). The system may also use a wireless communication link to transfer data from the vehicle without having to physically remove a memory module (col. 3, lines 9-11).

11. Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 8 and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. As per claims 8 and 18, the prior art of record does not show or reasonably suggest, in combination with the other claimed subject matter, a data exchange system and method which includes a controller temporarily networked adjacent multiple vehicle processors via an alternative connection mechanism. As per claims 9 and 19, the prior art of record does not show or reasonably suggest, in combination with the other claimed subject matter, a data exchange system and method which includes multiple vehicle processors requesting software from the external processor and transmitting non-request data to the external processor following load of software from external server whereby the external processor is adapted to analyze the non-request data.

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14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited documents are of general interest.

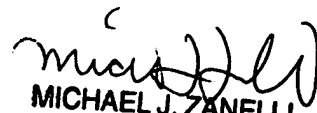
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (703) 305-9756.

The examiner can normally be reached on Monday-Thursday 5:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/mjz

  
MICHAEL J. ZANELLI  
PRIMARY EXAMINER